IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.602 OF 2005
IN
WRIT PETITION NO.1525 OF 2005

Mukand Staff & Officers' Association .. Appellant

v/s.

M/s.Mukand Ltd. .. Respondent

Mr.Sanjay K.Singhvi with Ms.Jane Cox for the appellant.

Mr.P.K.Rele, senior counsel with Mr.Piyush Shah for the respondent.

CORAM : R.M. LODHA AND
J.P. DEVADHAR, JJ.

DATED : 25th July, 2005

P.C.

Heard Mr.Sanjay K. Singhvi, the learned counsel for the appellant. We perused the impugned order and also the judgment of the Supreme Court dated March 10, 2004.

2. By the order dated March 10, 2004, the Supreme Court remitted the matter back to the Industrial Tribunal for adjudication. After remand, the present appellant made an application seeking amendment in the statement of claim. The amendment in the statement of claim sought by the appellant pertained to the diverse aspects. Interalia, the amendment in the statement of claim by introducing paragraphs 17-A and 17-B relating to the estoppel and community of interest has been denied.

Aggrieved by that order, the appellant filed writ petition. The learned single Judge dismissed the writ petition by his order dated 13th June, 2005 giving rise to the present appeal.

3. The paragraphs 17-A and 17-B which were sought to be introduced by way of amendment in the statement of claim read thus-

"17-A **Estoppel**

The Company, in the past has entered into various settlements under the provisions of the ID Act of 1947, which are on record before this Hon'ble Tribunal under exhibit U-34.

The Company has made the Industrial Employment (Standing Orders) Act 1946 applicable to all its workmen covered under the reference through a circular issued by the Managing Director of the company (U 48 & U 49) and accordingly charge sheet were issued to the workmen in accordance with the Model Standing Orders framed under the Act (U 80, 1-15).

The Company has locked out its workers covered under the reference under provisions of MRTU-PULP Act 1971 (U 18).

Whether an employee is a workmen or not is not merely a question of law but a mixed question of law and fact. The events herein above and the conduct of the company clearly go to show that the company has accepted the employees under the reference as "workmen" and hence they are estopped from contesting this claim of the workmen.

The Association representing the second party states and submits that the first part company is estopped from claiming that any of the monthly rated staff are not workmen.

17-B **Community of interests between the**

workmen and so-called non-workmen from monthly rated staff:

It is submitted that even if it is assumed without admitting that some of the monthly rated staff are not workmen, then too, there is community of interest between the workmen and such non-workmen. Workers have a customary right to get the same benefits, as non-workmen on the same grade. Whenever a non-workmen is given a certain benefit and facility is also given to the workmen belonging to this same grade and vice versa. Hence, the workmen are vitally interested and have a genuine interest in the wages and benefits of the non-workmen. Hence it is submitted that there exists a community of interest between workmen and non-workmen on the same grade. Further, many workmen are promoted to posts which the company claims are not workmen. Hence even if any such post is presumed to be out of the ken of the definition of workmen, the admitted workmen still are vitally and genuinely interested in the wages and benefits paid to such post. Being members of the same trade union, espousing the common causes and interests and having collectively bargained for salary revisions and service conditions and made settlements in the past, there exists community of interest among the members, whether workmen or not. Hence and otherwise also it is submitted that there is community of interest between the workmen and non-workmen on the same grade."

4. The Supreme Court in its order dated March 10, 2004 while remitting the matter back to the Industrial Tribunal directed the Industrial tribunal to adjudicate the claim of the workmen alone. The proposed amendments in the statement of claim relate to non-workmen and therefore, could not have been permitted in the light of the specific direction of the Supreme Court in its

order dated 10th March, 2004.

5. Thus, no fault can be found in the order of the Industrial Tribunal and also the order of the learned single Judge. Appeal is dismissed in limine.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)